

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION**

JUDITH A GUTH,

Plaintiff,

vs.

ALLIED HOME MORTGAGE CAPITAL  
CORP., ET AL.

Defendants.

Case No: 1:05 CV 669

**ANSWER OF DEFENDANTS ALLIED  
HOME MORTGAGE CAPITAL CORP.  
AND STEVEN ELLIS**

Defendants Allied Home Mortgage Capital Corporation (“Allied”) and Steven Ellis (“Ellis”), for their Answer to the Complaint, respond to the numbered paragraphs therein, as set forth hereinafter.

**FIRST DEFENSE**

1. The allegations against these Defendants are subject to compulsory arbitration, pursuant to an agreement, a copy of which is attached hereto as **Exhibit “A”**. These Defendants assert this action should be dismissed or stayed as to them and referred to arbitration, as they have requested by letter to Plaintiff’s counsel, a copy of which is attached hereto as **Exhibit “B.”** Without waiving their right to arbitration, these Defendants further respond to the Complaint as set forth hereinafter.

**SECOND DEFENSE**

2. Admit paragraphs 1, 2, and 3.
3. In response to paragraph 4, admit Ellis is an employee of Allied, but deny that Ellis took the various actions alleged in the Complaint or that such would have been authorized by Allied.
4. Deny paragraph 5 for lack of knowledge.
5. In response to paragraph 6, deny the allegations of the Complaint, but admit that they pertain to the financing of the real property at issue.
6. Deny paragraph 7 for lack of knowledge.
7. In response to paragraph 8, admit Plaintiff contacted Ellis about a loan, but deny the balance of the paragraph for lack of knowledge.
8. Deny paragraph 9.
9. In response to paragraph 10, admit a telephone conversation occurred, but deny the balance of the paragraph.
10. Deny paragraphs 11 and 12.
11. Deny paragraph 13 for lack of knowledge.
12. Deny paragraph 14.
13. In response to paragraph 15, admit that Ellis provided and Plaintiff executed a truth-in-lending disclosure statement and a borrower's certification and authorization.
14. Admit paragraphs 16 and 17.
15. Deny paragraphs 18, 19, 20, and 21.

16. Admit paragraph 22.
17. Deny paragraphs 23, 24, and 25.
18. In response to paragraph 26, incorporate their responses to paragraphs 1 through 25.
19. In response to paragraph 27, the Ohio Mortgage Broker Act speaks for itself.
20. Admit paragraph 28.
21. Deny paragraph 29 for lack of knowledge.
22. Admit paragraphs 30, 31, and 32.
23. Deny paragraph 33, 34, 35, and 36.
24. In response to paragraph 37, incorporate their responses to paragraphs 1 through 36.
25. In response to paragraph 38, the Truth-in-Lending Act speaks for itself.
26. Deny paragraphs 39, 40, and 41.
27. In response to paragraph 42, incorporate their responses to paragraphs 1 through 41.
28. In response to paragraph 43, the Ohio Consumer Sales Practices Act speaks for itself.
29. Admit paragraph 44.
30. Deny paragraph 45 for lack of knowledge.
31. Admit paragraphs 46, 47 and 48.
32. Deny paragraphs 49, 50, 51, 52, 53, and 54.

33. In response to paragraph 55, incorporate their responses to paragraphs 1 through 54.

34. Deny paragraphs 56, 57, 58, 59, and 60.

35. In response to paragraph 61, incorporate their responses to paragraphs 1 through 60.

36. Deny paragraphs 62 and 63.

37. In response to paragraph 64, incorporate their responses to paragraphs 1 through 63.

38. Deny paragraphs 65, 66, 67, and 68.

39. In response to paragraph 69, incorporate their responses to paragraphs 1 through 68.

40. Deny paragraphs 70, 71, 72, 73, and 74.

41. In response to paragraph 75, incorporate their responses to paragraphs 1 through 74.

42. Deny paragraph 76.

43. In response to paragraph 77, deny Plaintiff's entitlement to any of the relief requested.

44. All claims in the Complaint not expressly admitted herein are deemed to be denied.

**AFFIRMATIVE DEFENSES**

45. The Second Claim for Relief is time-barred.
46. The Complaint fails to state a claim for which relief may be granted against Allied and Ellis.
47. Plaintiff's alleged damages were caused by her own negligence and/or actions.
48. Plaintiff's claims and/or alleged damages are barred by the applicable statute of frauds and/or parol evidence rule.
49. The Complaint is barred by the doctrines of estoppel, equity, and waiver, and laches.
50. Plaintiff is not entitled to punitive damages or attorney fees.
51. Defendants are entitled to a set-off for all benefits received by Plaintiff.
52. Defendants are exempt from application of the Ohio Mortgage Broker Act, under R.C. Sec. 1322.02 (C) (1) (g) and (C) (2).

WHEREFORE, having fully responded to the Complaint, Defendants Allied Home Mortgage Capital Corporation and Steven Ellis respectfully request the following relief:

- (a) an Order dismissing this action as to these Defendants or staying this action, and ordering that Plaintiff submit her claims against these Defendants to arbitration, or
- (b) alternatively, dismissal of all claims against these Defendants, with prejudice, and

(c) costs, and such other relief, including reasonable attorney fees, as  
the Court deems appropriate.

DATED this \_\_\_\_\_ day of October, 2005.

**STARK & KNOLL CO., L.P.A.**

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*Attorney for Defendants Allied Home Mortgage  
Capital Corp. and Steve Ellis*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this  
\_\_\_\_\_ day of October, 2005 via U.S. Regular Mail upon the following parties:

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/s/ Terrence L. Seeberger  
Attorney for Defendants Allied Home  
Mortgage Capital Corp. and Steve Ellis